

In the Matter of Merchant Mariner's Document No. Z-244833-D2  
Issued to: LOUIS ROSE

DECISION AND ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

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LOUIS ROSE

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By order dated 3 February, 1954, an Examiner of the United States Coast Guard at New York, New York, suspended Merchant Mariner's Document No. Z-244883-D2 issued to Louis Rose upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as a fireman-watertender on board the American SS PIONEER LAKE under authority of the document above described, on or about 2 December, 1953, while said vessel was in the port of Bugo, P.I., he wrongfully assaulted and battered a fellow crew member, Andres A. Paredes, by striking him with a dangerous weapon; to wit, a short length of pipe.

On 27 January, 1954, Appellant was served with the charge and specification and ordered to appear for the hearing at 1400 on 3 February, 1954. The hearing was commenced on the latter date although Appellant failed to put in an appearance as ordered. Since no word had been received from Appellant explaining his absence, the Examiner announced that the proceedings would be conducted in absentia and he entered a plea of "not guilty" to the charge and specification on behalf of Appellant. On the basis of the testimony of the seaman allegedly assaulted and battered by Appellant, the Examiner concluded that a prima facie case had been made out and he suspended Appellant's document for 12 months - 6 months outright and 6 months on 12 months probation. Appellant surrendered his document on 19 February, 1954, and obtained a 6 month temporary document on 24 May, 1954.

Among other points raised on appeal, it is contended that Appellant was denied a fair opportunity to appear at a hearing and testify in his own behalf as to the true facts surrounding the incident in question. In support of this contention, Appellant has submitted a sworn affidavit stating that he received a stab wound early in the morning on the date of the hearing, 3 February, 1954, and that he was hospitalized on that date. The affidavit also states that Appellant's wife telephoned the Coast Guard on the morning of 3 February, 1954, and advised someone there of Appellant's mishap.

APPEARANCE FOR APPELLANT: Harold Henry, Esquire, of New York City.

Subsequent to the taking of this appeal, it was verified that Appellant received emergency

hospital treatment on 3 February, 1954, for a stab wound in the back which was a wound of such a nature as to incapacitate a person for a few days. No verification of the telephone call by Appellant's wife could be obtained.

H/ In view of these circumstances, it is my opinion that Appellant should be given an opportunity to testify in his own behalf and to cross-examine seaman Paredes if it is possible to locate him and recall him as a witness before the Examiner. For this purpose, the record will be remanded.

### ORDER

The order of the Examiner dated at New York, New York, on 3 February, 1954, is VACATED and SET ASIDE. The entire record is REMANDED to said Examiner with directions to reopen the hearing and conduct further proceedings not inconsistent with this decision. In the absence of the presentation of additional evidence, the Examiner's decision of 3 February, 1954, shall be reinstated and the order contained therein shall become effective.

J. M. Shirshfield  
Rear Admiral, United States Coast Guard  
Acting Commandant

Dated at Washington, D C., this 19th day of October, 1954.